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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 197**

**The Mental Health (Scotland) Act 2015 (Commencement No. 4 and Transitional and Savings Provisions) Order 2017**

*PRELIMINARY*

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Mental Health (Scotland) Act 2015 (Commencement No. 4 and Transitional and Savings Provisions) Order 2017 and comes into force on 30th June 2017.

(2) In this Order—

“the Act” means the Mental Health (Scotland) Act 2015;

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(1);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2).

(3) For the purposes of articles 3 to 18, 24 and 25, “the appointed day” means 30th June 2017.

(4) For the purposes of articles 19 to 23, “the appointed day” means 30th September 2017.

**Appointed day**

2.—(1) Subject to paragraph (2), the day appointed for the coming into force of the provisions of the Act specified in column 1 of the schedule (the subject matter of which is described in column 2 of the schedule) is the day specified in column 3 of the schedule.

(2) Where a purpose is specified in column 4 of the schedule, a provision mentioned in column 1 comes into force in accordance with paragraph (1) only for that purpose.

*TRANSITIONAL AND SAVINGS PROVISION*

**COMPULSORY TREATMENT ORDERS AND COMPULSION ORDERS**

**Section 87A of the 2003 Act: further information where compulsory treatment order extended**

3. Despite the commencement of section 2 of the Act, section 87A (further information where order extended) of the 2003 Act(3) has no effect where the determination made by the responsible medical officer under section 86 (responsible medical officer’s duty to extend order) of that Act is made before the appointed day.

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(1) 2003 asp 13.

(2) 1995 c.46.

(3) Section 87A is inserted by section 2 of the Mental Health (Scotland) Act 2015 (asp 9, “the Act”).

#### **Section 153A of the 2003 Act: further information on extension of compulsion order**

4. Despite the commencement of section 50 of the Act, section 153A (further information on extension of compulsion order) of the 2003 Act<sup>(4)</sup> has no effect where the determination made by the responsible medical officer under section 152 (further review: responsible medical officer's duty to extend compulsion order) of that Act is made before the appointed day.

#### *EMERGENCY AND SHORT-TERM DETENTION*

#### **Emergency detention in hospital: exclusion for patients where section 113(5) of the 2003 Act applies**

5. Despite the commencement of section 4 of the Act, the amendments made by subsection (3) of that section to section 38 (duties on hospital managers: examination, notification etc.) of the 2003 Act have no effect where the emergency detention certificate referred to in section 38(1) of the 2003 Act has been granted before the appointed day.

#### **Section 46 of the 2003 Act: notification by hospital managers**

6. Despite the commencement of section 5 of the Act, the amendments made by subsection (3) of that section to section 46 (hospital managers' duties: notification) of the 2003 Act have no effect where the short-term detention certificate referred to in section 46(1) of the 2003 Act has been granted before the appointed day.

#### *SUSPENSION OF ORDERS AND MEASURES*

#### **Section 43 of the 2003 Act: suspension of orders during emergency detention**

7. Despite the commencement of section 7 of the Act, the amendments made by that section to section 43 (effect of subsequent emergency detention certificate on compulsory treatment order) of the 2003 Act have no effect where the emergency detention certificate referred to in section 43(1) (b) of the 2003 Act is granted before the appointed day.

#### **Section 56 of the 2003 Act: suspension of orders during short-term detention**

8. Despite the commencement of section 8 of the Act, the amendments made by subsection (2) of that section to section 56 (effect of subsequent short-term detention certificate on emergency detention certificate) of the 2003 Act have no effect where the short-term detention certificate referred to in section 56(1)(b) (effect of subsequent short-term detention certificate on compulsory treatment order) of the 2003 Act is granted before the appointed day.

#### **Section 10 of the Act: suspension of detention and other measures**

9. Despite the commencement of section 10 of the Act—
- (a) the amendments made by subsection (2) of that section to section 127 (suspension of measure authorising detention) of the 2003 Act have no effect in respect of a certificate granted under section 127(1) of the 2003 Act before the appointed day;
  - (b) the amendments made by subsection (3) of that section to section 128 (suspension of other measures) to the 2003 Act have no effect in respect of a certificate which is granted under section 128(1) of the 2003 Act before the appointed day;

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(4) Section 153A is inserted by section 50(2) of the Act.

- (c) the amendments made by subsection (4)(a) and (b) of that section to section 224 (patients subject to certain other orders and directions: suspension of measure authorising detention) of the 2003 Act have no effect in respect of a certificate granted under section 224(2) of the 2003 Act before the appointed day.

#### *REMOVAL AND DETENTION OF PATIENTS*

#### **Section 295A of the 2003 Act: notification of decisions under section 293 or 295**

- 10.** Despite the commencement of section 19 of the Act—
- (a) subsections (1) and (2) of section 295A(5) (notification of decision under section 293 or 295) of the 2003 Act have no effect where the decision of the sheriff referred to in section 295A(1) is made before the appointed day;
  - (b) subsections (3) and (4) of section 295A of the 2003 Act have no effect where the decision of the sheriff referred to in section 295A(3) is made before the appointed day.

#### **Section 299 of the 2003 Act: nurse’s power to detain pending medical examination**

**11.** Despite the commencement of section 20 of the Act, the amendments made by that section to section 299 (nurse’s power to detain pending medical examination) of the 2003 Act have no effect where a patient is detained under section 299(2) of the 2003 Act before the appointed day.

#### *PERIODICAL REFERRAL OF CASES*

#### **Periodical referral of cases: amendments made by section 21 of the Act**

- 12.** Despite the commencement of section 21 of the Act—
- (a) the amendment made by subsection (2) of that section to section 101 (Tribunal’s duty to review determination under section 86) of the 2003 Act has no effect where the “renewal day” defined in section 101(4) of the 2003 Act falls before the appointed day;
  - (b) the amendments made by subsection (3) of that section to section 189 (reference to Tribunal by Scottish Ministers) of the 2003 Act have no effect where the “relevant day” defined in section 189(6) of the 2003 Act falls before the appointed day;
  - (c) the amendments made by subsection (4) of that section to section 213 (reference to Tribunal by Scottish Ministers) of the 2003 Act have no effect where the “relevant day” defined in section 213(6) falls before the appointed day;
  - (d) paragraph 13A(6) of schedule 2 (the Mental Health Tribunal for Scotland) of the 2003 Act continues to have effect where paragraph (a), (b) or (c) of this article applies.

#### *NAMED PERSONS*

#### **Named persons in respect of patients subject to relevant orders: savings and cessation**

**13.—(1)** Despite the commencement of section 22 of the Act and the repeal of section 251(7) of the 2003 Act, any person who, before the appointed day, is a named person in relation to another

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(5) Section 295A is inserted by section 19(2) of the Act.

(6) Paragraph 13A of schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) was inserted by the Adult Support and Protection (Scotland) Act 2007 ([asp 10](#)). It is repealed by section 21(5) of the Act.

(7) Section 251 of the 2003 Act is repealed by section 22(2) of the Act.

person who is subject to a relevant order (“the patient”) by virtue of that section continues to be a named person in relation to the patient until any one of the events mentioned in paragraph (2) occurs.

- (2) The events are—
- (a) the making of a declaration under article 15 by the patient;
  - (b) where the patient is subject to a short-term detention certificate, the revocation of that certificate;
  - (c) where the patient is subject to a compulsory treatment order, the revocation of that order;
  - (d) where the patient is subject to a compulsion order, the revocation of that order;
  - (e) where the patient is subject to a hospital direction or transfer for treatment direction, the revocation of that hospital direction or transfer for treatment direction under section 210(2) (revocation following responsible medical officer report), 212(3) or (4) (duty of Scottish Ministers to keep directions under review) or 215(5) (powers of Tribunal on reference under section 201(3), 211(2) or 213(2) or on application under section 214(2));
  - (f) where the patient is subject to an interim compulsory treatment order, the revocation of that order (including the revocation by virtue of section 75 (effect of subsequent compulsory treatment order on interim compulsory treatment order) of the 2003 Act).
- (3) In this article “relevant order” means—
- (a) a short-term detention certificate;
  - (b) a compulsory treatment order;
  - (c) an interim compulsory treatment order;
  - (d) a compulsion order;
  - (e) a hospital direction;
  - (f) a transfer for treatment direction.
- (4) This article ceases to have effect on 30th June 2018.

#### **Named persons acting under article 13(2): review of relevant order after 30th September 2017**

**14.—**(1) This article applies where, after 30th September 2017, a person continues to act as a patient’s named person (“the named person”) by virtue of article 13(1) in respect of a patient who is subject to a compulsory treatment order, compulsion order, hospital direction or transfer for treatment direction.

- (2) Article 13(2) is to be read as including the following events:—
- (a) where the patient is subject to a compulsory treatment order, a review of the order under section 77(2) (first mandatory review) or 78(2) (further mandatory reviews) of the 2003 Act;
  - (b) where the patient is subject to a compulsion order, a review of that order under section 139(2) (first review of compulsion order) or 140(2) (further reviews of compulsion order) of the 2003 Act;
  - (c) where the patient is subject to a hospital direction or a transfer for treatment direction, a review of that direction under section 206(2) of the 2003 Act (review of hospital direction and transfer for treatment direction).

#### **Named persons: declaration in relation to a named person acting under article 13**

**15.—**(1) This article applies where a person continues to act as a patient’s named person by virtue of article 13(1) after the appointed day.

(2) A person who has attained the age of 16 years (“the patient”) may make a declaration in accordance with paragraph (3) stating that a person specified in the declaration is not to be the patient’s named person.

(3) The declaration must be—

- (a) in writing;
- (b) signed by the patient; and
- (c) witnessed by a person mentioned in paragraph (4) (“the witness”) who certifies that, in the opinion of the witness, the patient—
  - (i) understands the effect of making the declaration; and
  - (ii) has not been subjected to any undue influence in making the declaration.

(4) The persons who may witness the declaration are—

- (a) persons providing independent advocacy services;
- (b) medical practitioners;
- (c) arts therapists, dieticians, occupational therapists, physiotherapists, practitioner psychologists and speech and language therapists registered with the Health and Care Professions Council;
- (d) persons employed in the provision of, or managing the provision of, a care service;
- (e) registered nurses;
- (f) social workers; and
- (g) solicitors.

(5) In this article—

“care service” has the meaning given by subsection (1)(a), (b), (d), (f), (g) and (j) of section 47 of the Public Services Reform (Scotland) Act 2010<sup>(8)</sup>;

“Health and Care Professions Council” means the Council established by article 3 of the Health and Social Work Professions Order 2002<sup>(9)</sup>;

“independent advocacy service” has the same meaning as in section 259(1) of the 2003 Act<sup>(10)</sup>; and

“social worker” has the meaning given by section 77 of the Regulation of Care (Scotland) Act 2001<sup>(11)</sup>.

### **Appointment of named persons: amendments made by section 23 of the Act**

**16.** Despite the commencement of section 23 of the Act—

- (a) the amendment made by subsection (2) of that section to section 250 (nomination of named person) of the 2003 Act does not have effect in respect of a nomination made before the appointed day under section 250(1) of the 2003 Act;

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<sup>(8)</sup> 2010 asp 8.

<sup>(9)</sup> S.I. 2002/254. Article 3 was relevantly amended by section 214 of the Health and Social Care Act 2012 (2012 c.7). That section provided that the body then known as the Health Professions Council was to continue in existence and be renamed as the Health and Care Professions Council; subsection (2) substituted a new article 3(1) to refer to the Council by its new name.

<sup>(10)</sup> For the purposes of section 259(1), “advocacy services” has the meaning given by subsection (4) of section 259, and “independent” has the meaning given by subsection (5) of that section.

<sup>(11)</sup> 2001 asp 8. Section 77 was substituted by paragraph 9 of schedule 1 of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211). There are amendments to section 77 which are not relevant to this Order.

- (b) the amendments made by subsection (3) of that section to section 257 (named person: Tribunal's powers) of the 2003 Act do not apply where the application referred to in section 257(1) of the 2003 Act is made on or before the appointed day.

#### *ARRANGEMENTS FOR TREATMENT OF PRISONERS*

##### **Compulsory treatment of prisoners: amendments made by section 35 of the Act**

17. Despite the commencement of section 35(3) of the Act paragraph 1A(12) of schedule 3 (application of Chapter 1 of Part 7 to certain patients) of the 2003 Act has no effect where the requirement to make the application under section 63 of the 2003 Act (application for compulsory treatment order) by virtue of section 57(1) of that Act (mental health officer's duty to apply for compulsory treatment order) arises before the appointed day.

#### *PROVISION OF INFORMATION BY THE COMMISSION*

##### **Provision of information by the Commission: amendments made by section 36 of the Act**

18. Despite the commencement of section 36 of the Act—
- (a) section 19 of the 2003 Act (statistical information) continues to have effect as it had effect immediately before the appointed day in respect of any direction made by the Scottish Ministers before the appointed day; and
  - (b) any direction made by the Scottish Ministers under section 19 of the 2003 Act before the appointed day remains in force until revoked.

#### *CRIMINAL CASES*

##### **Periods for assessment orders: amendments made by section 40 of the Act**

19. Despite the commencement of section 40 of the Act—
- (a) the amendments made by subsection (3) of that section to section 52F of the 1995 Act(13) (assessment order: supplementary) have no effect where the assessment order referred to in section 52F(1) of the 1995 Act is made before the appointed day;
  - (b) the amendments made by paragraph (a) of subsection (4) of that section to section 52G of the 1995 Act (review of assessment order) have no effect where the assessment order referred to in section 52G(1) of the 1995 Act is made before the appointed day;
  - (c) the amendments made by subsection (5) of that section to section 52H(14) to the 1995 Act (early termination of assessment order) have no effect where the assessment order referred to in section 52H(1) of the 1995 Act is made before the appointed day.

##### **Periods for treatment orders: amendments made by section 41 of the Act**

20. Despite the commencement of section 41 of the Act—

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(12) Paragraph 1A is inserted in schedule 3 of the 2003 Act by section 35(3) of the Act.

(13) Sections 52F, 52G and 52H were inserted by the 2003 Act, section 130.

(14) Section 52H was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), schedule 2(1), paragraph 2(a) and (b).

- (a) the amendment made by subsection (3) of that section to section 52P of the 1995 Act<sup>(15)</sup> (treatment order: supplementary) has no effect where the treatment order referred to in section 52P(1) is made before the appointed day;
- (b) the amendments made by subsection (4) of that section to section 52R<sup>(16)</sup> of the 1995 Act (termination of treatment order) have no effect where the treatment order referred to in section 52R(1) of the 1995 Act was made before the appointed day.

#### **Periods for short-term compulsion: amendments made by section 42 of the Act**

**21.** Despite the commencement of section 42 of the Act—

- (a) the amendment made by subsection (3) of that section to section 53A<sup>(17)</sup> of the 1995 Act (interim compulsion order: supplementary) has no effect where the interim compulsion order referred to in section 53A(1) of the 1995 Act was made before the appointed day;
- (b) the amendment made by subsection (5) of that section to section 54 of the 1995 Act (unfitness for trial: further provision) has no effect where the temporary compulsion order referred to in section 54(2B)(a)<sup>(18)</sup> of the 1995 Act is made before the appointed day.

#### **Periods for compulsion orders: amendments made by section 43 of the Act**

**22.** Despite the commencement of section 43 of the Act—

- (a) the amendments made by section 43(3) of the Act to section 57B of the 1995 Act<sup>(19)</sup> (compulsion order authorising detention in hospital or requiring residence at place: ancillary provision) have no effect where the compulsion order referred to in section 57B(1) of the 1995 Act is made before the appointed day;
- (b) the amendments made by section 43(4) of the Act to section 57D of the 1995 Act (compulsion order: supplementary) have no effect where the compulsion order referred to in section 57D(1) of the 1995 Act is made before the appointed day.

#### **Periods for hospital directions: amendments made by section 44 of the Act**

**23.** Despite the commencement of section 44 of the Act, the amendments made by subsection (3) of that section to section 59C<sup>(20)</sup> of the 1995 Act (hospital direction: supplementary) have no effect where the hospital direction referred to in section 59C(1) of the 1995 Act is made before the appointed day.

#### **Consequential repeals: section 49 of the Act**

**24.** Despite the commencement of section 49 of the Act, the repeal made by paragraph (a) of that section does not affect the validity of any order, or the detention of any patient which is authorised by any order, mentioned in section 9(1) of the Crime and Punishment (Scotland) Act 1997<sup>(21)</sup>.

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<sup>(15)</sup> Sections 52P and 52R were inserted by the 2003 Act, section 130.

<sup>(16)</sup> Section 52R was amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 2(1), paragraph 3(a) and (b).

<sup>(17)</sup> Section 53A was inserted by the 2003 Act, section 131.

<sup>(18)</sup> Subsection (2B) was inserted by the 2003 Act, schedule 4, paragraph 8(b).

<sup>(19)</sup> Sections 57B and 57D were inserted by the 2003 Act, section 133.

<sup>(20)</sup> Section 59C was inserted by the 2003 Act, schedule 4, paragraph 8(b).

<sup>(21)</sup> 1997 c.48. Section 9 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), paragraph 66 of schedule 7.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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**Effect of revocation of restriction order: amendments made by section 52 of the Act**

**25.** Despite the commencement of section 52 of the Act the amendments made by that section to section 198(2) of the 2003 Act (effect of revocation of restriction order) have no effect where the circumstances referred to in section 198(1)(a) and (b) of the 2003 Act occur before the appointed day.

St Andrew's House,  
Edinburgh  
9th June 2017

*MAUREEN WATT*  
Authorised to sign by the Scottish Ministers